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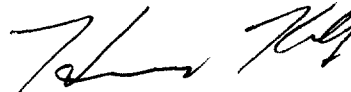
RE: Comments of the Illinois Public Telecommunications Association to the Second
Further Notice of Proposed Rulemaking in CC Docket No. 92-77, In the Matter of
Billed Party Preference for InterLATA 0+ Calls.

Ladies and Gentlemen:

Enclosed for filing, please find an original and twelve copies of the Illinois Public Telecommunications Association's Comments to the Second Further Notice of Proposed Rulemaking in the above matter. We would also appreciate it if you would return a filed-stamped copy of the Comments in the enclosed self-addressed stamped envelope.

If you have any questions, please feel free to contact me.

Sincerely,



Henry T. Kelly

HTK:cj

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Billed Party Preference for) CC Docket No. 92-77
InterLATA 0+ Calls)

**COMMENTS OF THE
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION
TO THE COMMISSION'S SECOND FURTHER
NOTICE OF PROPOSED RULEMAKING**

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Dated: July 17, 1996

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
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InterLATA 0+ Calls)	

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**COMMENTS OF THE
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION
TO THE COMMISSION'S SECOND FURTHER
NOTICE OF PROPOSED RULEMAKING**

The Illinois Public Telecommunications Association (the "IPTA"), by its attorneys O'Keefe, Ashenden, Lyons and Ward, states as follows for its Comments to the Commission's Second Further Notice of Proposed Rulemaking released on June 6, 1996 in this Proceeding (hereinafter the "Second Further Notice").

SUMMARY

The IPTA supports the Commission's efforts to establish rate ceilings or benchmarks for all operator assisted calls (not just 0+ calls) as long as the Commission recognizes the connection between reducing rates for operator service calls, and the setting of a fair, market-based rate of compensation for access code and subscriber 1-800 calls. The IPTA proposes that the Commission establish benchmarks for 4 types of operator service calls; the benchmarks should be a setup charge for initiating the call, plus a flat per minute charge. Any operator service provider that must charge rates in excess of

the benchmarks should file for a waiver to the Commission, and establish the factors to evidence why the benchmarks should not apply. In addition, the Commission should continue to require operator service providers to be held accountable for their rates (whether they are at or below the benchmarks) by filing tariffs with the Commission.

FRAMEWORK FOR THE IPTA'S COMMENTS

The IPTA is an association of payphone providers, interexchange carriers, and payphone equipment service suppliers that has been in existence since 1985. As the IPTA has pointed out in other proceedings¹, the IPTA has spent considerable efforts to restructure the payphone industry in the state of Illinois. Its regulatory proceedings include cases involving AT&T, MCI and Sprint for compensation for subscriber 1-800 and access code calls,² cases in which Ameritech was ordered to cease subsidizing its payphone operations with revenue from noncompetitive services³, and rulemaking proceedings establishing maximum rate ceilings for operator assisted calls.⁴

Through these proceedings, the IPTA has experienced first-hand the relationship between the price for a local coin call, the rates charged by presubscribed operator service calls, the compensation paid to payphone providers by IXC's for access code calls and

¹See IPTA Comments in CC Docket No. 96-128, filed July 1, 1996.

²*AAA Coin Payphones, Inc., et al. v. AT&T, et al.*, ICC Docket No. 92-0400.

³*Illinois Public Telecommunications Association, et al. v. Illinois Bell Telephone Company*, ICC Docket No. 88-0412.

⁴*Illinois Commerce Commission, on its own motion, Amendment of 83 Ill. Adm. Code 770, implementing P.A. 88-382*, ICC Docket No. 93-0335.

subscriber 1-800 calls, and the commissions paid to payphone providers for presubscribed operator service calls. Adjusting the payphone provider's revenue and cost on one type of call will have a dramatic effect on the rates charged by the payphone provider on other calls.

The IPTA has learned, for example, that in 1992, although dial-around and subscriber 1-800 calls accounted for approximately 11 percent of the calls made from payphones, there was no compensation to the payphone provider for those calls. In addition, in 1992, it was clear that a coin call of \$0.25 per call (which was the ratepayer-subsidized rate charged by Ameritech) did not cover the cost of a local call, and coin calls accounted for approximately 81% of the calls made from payphones.

Because 92% of the calls made from payphones were producing revenue to the payphone provider at less than the cost of a call, the payphone provider was forced to recover these revenue shortfalls from the remaining 8% of calls -- presubscribed operator service calls.⁵ The more access code calling and subscriber 1-800 calls increased, and the higher the price squeeze imposed on the payphone provider by the LEC, the more presubscribed operator service calls were relied upon to cover the payphone provider's costs. Payphone providers exerted substantial pressure on small operator service providers to pay the payphone provider increasingly high commissions for the privilege of

⁵Attached as Appendix A is a pie chart reflecting the approximate payphone traffic patterns in 1992.

being the presubscribed carrier. In addition, the large IXC's such as AT&T, MCI and Sprint were marketing their operator services through a dial-around procedure whereby they could carry the operator service calls from a payphone without having to pay compensation to the originating payphone provider. These circumstances (along with other symptoms of a dysfunctional market such as excessive billing and collection rates assessed against operator service providers) made it virtually impossible for operator service providers to charge rates anywhere close to what were charged by AT&T, MCI and Sprint.

Since 1992, the Illinois payphone industry has changed considerably. Now, Ameritech is prohibited from subsidizing its payphone services with revenue from noncompetitive services, IXC's are obligated to compensate payphone providers for nonpresubscribed operator service calls and subscriber 1-800 calls, and operator service providers are subject to intrastate rate caps for operator service calls which the IPTA has found acceptable. The Illinois payphone market is not perfect, but coin rates have increased to levels that cover costs (in the Ameritech region), all calls made from a payphone provider's phones are compensated (albeit at levels below a payphone provider's costs), AT&T, MCI and Sprint no longer are free-riders on operator service calls made from payphones, and commissions paid to payphone providers by small presubscribed operator service providers have decreased, reducing the pressure on presubscribed operator service providers to charge excessive prices. The result from providing relief to payphone providers on each type of call (coin/0+/access

code/subscriber 1-800) is a healthier payphone industry, and a more competitive operator service market than perhaps anywhere in the country (not to mention the fact that Ameritech's business and residential ratepayers' rates have declined as a *direct* result of the elimination of the subsidies to Ameritech's payphone division.)

The Commission should mirror the Illinois experience by adopting rate benchmarks in this proceeding which are tied to the Commission's actions taken in *in the Matter of the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128. After the Commission eliminates the subsidies to local exchange carrier payphone providers (as required by Section 276 of the Telecommunications Act of 1996), and after the Commission sets a fair rate of compensation (which at a minimum exceeds costs) for access code calls and subscriber 1-800 calls, then the Commission could set rate caps which are acceptable to consumers. The level of the rate caps should take into consideration the rate of compensation paid to payphone providers for access code operator service calls and subscriber 1-800 calls. The closer the rate of compensation is set to a market-based rate of compensation, then the lower the rate ceilings could be for 0+ calls.

A. THE COMMISSION SHOULD NOT REQUIRE RATE DISCLOSURE ON ALL 0+ CALLS, AND SHOULD CONTINUE TOCSIA'S REQUIREMENT THAT RATE QUOTES BE MADE AVAILABLE UPON REQUEST. (Second Further Notice ¶15).

The Second Further Notice seeks comment on whether the FCC should go to the extreme measure of requiring disclosure of rates on all interLATA 0+ calls, and whether

there are alternative measures that would be as effective in assuring that consumers are made aware of the rates for presubscribed operator service calls. (**Second Further Notice ¶ 15.**) The IPTA suggests first, that any rate disclosure on operator service calls would have to apply to all operator service calls (including 10XXX, 950, and 1-800 access code calls), not just presubscribed 0+ calls. Even the largest operator service companies like AT&T have no ability to distinguish between an operator service call that comes into its network on a 10288 dialed access code, and those calls where AT&T is the presubscribed carrier and the consumer dials 0+. Therefore, requiring all 0+ calls to state that applicable rates would require all operator service calls to state the applicable rate. These additional rate quotations would increase call setup time, and provide unnecessary information to callers that dial access code operator service calls. Therefore, the Commission should continue to require operator service providers to give rate quotes on request, but not mandate rate quotes on all 0+ calls.

B. THE COMMISSION SHOULD ESTABLISH RATE CEILINGS OF A FIXED AMOUNT BASED ON THE TYPE OF OPERATOR SERVICE CALL, NOT BASED ON A PERCENTAGE OF THE FLUCTUATING LARGE CARRIER RATES. (Second Further Notice ¶ ¶16-28.)

The Second Further Notice requests comments on whether the Commission should establish benchmarks, based on reasonable expectations of consumers, for operator service calls. The Second Further Notice also requests comments on the appropriate level of the benchmark, and how the calls should be categorized in the benchmark (*i.e.* should all operator service calls be set a flat rate regardless of the type of operator service call.)

1. The Commission Should Establish 4 Rate Ceilings, Depending on the Type of Call, With a Fixed Setup Charge Plus a Per Minute Charge.

The IPTA supports rate ceilings that are intended to give consumers predictable, and acceptable, rates for operator service calls. Rate ceilings set by the Commission must also be at a level for operator service providers that recognizes the difference in costs (and economies of scale) to which small operator service providers, and certain operator service calls, are subject. Therefore, the Commission should establish benchmarks for the following types of interLATA operator service calls, which each have different network functions involved in completing the call:

1. Operator Station (customer dialed 0+) collect, billed to third number, coin call, or billed to a calling card (Second Further Notice, Appendix E, tables C, E, G);
2. Operator Station (operator dialed) collect, billed to a third number, coin call, or billed to a calling card (Second Further Notice, Appendix E, tables D, F, H);
3. Person-to-Person (consumer dialed 0+) collect, billed to third number, coin call, or billed to a calling card (Second Further Notice, Appendix E, table A); and,
4. Person-to-Person (operator dialed) collect, billed to third number, or coin call (Second Further Notice, Appendix E, table B.)

There could also be an additional set of rates for international operator service calls.

These categories of calls should each have a different surcharge amount (to reflect the varying costs involved in handling the call setup), and a fixed per minute charge, regardless of mileage or time of day.

By adopting these 4 categories of calls, and allowing a surcharge plus a fixed per minute rate, the Commission could achieve many of the goals suggested by the parties. As Ameritech and the Pacific Companies argue, operator service providers should have some flexibility to price different types of operator service calls differently. (Second Further Notice ¶21.) For example, setting a operator dialed person-to-person call at the same rate as a direct dialed calling card call would either deprive the consumers of the benefit of placing an automated call (if the rate is set too high), or discourage (and maybe stop entirely) operator service companies from providing person-to-person services (if the rate is set too low).

In addition, most operator service companies today charge customers a flat initial surcharge or setup charge for the operator handling functions, plus a per minute charge. By continuing a rate systems with a flat setup charge plus a per minute rate, the Commission could satisfy the Comptel Coalition's concerns that any benchmark be based on consumers' expectations. (Second Further Notice ¶11.) On the otherhand, having too many categories of operator service rates would make it virtually impossible for consumers to learn what the prices would be for a particular type of operator service calls. The 4 categories suggested by the IPTA are roughly equal to the categories proposed by the Comptel Coalition. (Second Further Notice ¶11; Appendix C.)

Setting benchmarks, or more appropriately rate ceiling for these categories would not preclude carriers from charging consumers less than the ceilings, and charging consumers different permutations based on time, date, distance, and type of call. As the

Second Further Notice points out, the three largest carriers may have up to 528 different call variations built into their tariff system. (Second Further Notice ¶26.) However, by establishing 4 basic call types, with a surcharge or setup cost and flat per minute rate, consumers will easily learn whether a particular carrier's rates are either competitive or not (if priced below the rate ceiling.)

2. The Rate Ceilings Should be at a Fixed Dollar Amount, That Does Not Fluctuate If the Three Largest Carriers Adjust Their Rates.

After the Commission provides compensation to payphone providers from the CC Docket No. 96-128 proceeding, the Commission could establish rate caps at levels which are based on the existing average rates charged by AT&T, MCI and Sprint within each of the four categories of calls described above. (Second Further Notice ¶ ¶17-20, 24-26.) Initially setting the benchmark at these rates would be consistent with the Comptel Coalition's comments that the rates be set at levels which consumers find acceptable in the market. These carriers are the largest interLATA operator service providers, and have, by setting their rates at levels that attract consumers, set rates which consumers find acceptable. However, 15% above the existing rates may be insufficient to account for the costs incurred by small OSPs which AT&T, MCI and Sprint do not incur. Rates at 20% to 30% greater than the three largest carriers could still provide payphone providers with fair compensation for the use of their payphones (on all calls, including subscriber 1-800 calls), while providing the market with sufficient flexibility to allow competition to

develop.

There is still a need to allow smaller carriers to charge rates which are higher than the average of the three largest carriers. Small operator service providers do not have the same economies of scale in providing their services. In addition, small operator service providers have historically faced excessive billing and collection costs by local exchange carriers. Billing and collection rates charged by local exchange carriers to a small OSP may be 100% to 200% more than the rates charged by a LEC to AT&T, MCI or Sprint. Small OSPs need a margin above the average rates in order to take these costs into account. Billing and collection, for example, is a cost which is especially volume-sensitive (not to mention access charges, and other intercarrier transaction costs) which small carriers do not have the traffic volume to take advantage of the discounts. A rate of 15%, as suggested by the Second Further Notice, would be unduly prejudicial to the small carriers.

Another major cost to OSPs that the Commission must take into account is the compensation paid to payphone providers. Currently presubscribed small OSPs compensate payphone providers for the use of the payphone providers services and facilities on all calls. In most states, AT&T, MCI and Sprint, do not compensate a payphone provider when an end user places an access code operator service call from a payphone. Therefore, these large carriers have a competitive advantage because their rates do not accurately reflect all of the costs incurred by the small OSPs' -- compensation to the payphone provider for intrastate operator service calls made from payphones.

The rate of 115 percent suggested by the Second Further Notice (**Second Further Notice ¶24**) does not adequately account for the different costs incurred by the small OSPs, and the extent to which AT&T, MCI and Sprint take advantage of their market dominance.

For these reasons, the Commission should make every effort to coordinate the rules ultimately adopted here, with the rules adopted in CC Docket No. 96-128; more specifically, these rate ceilings should not become effective until the Commission implements its rules adopted in CC Docket No. 96-128. If the Commission reduces the rates charged by small operator service companies then both these small operator service companies and payphone providers will be irreparably harmed. If there is 1) inadequate compensation paid to payphone providers for subscriber 1-800 calls and access code calls; 2) subsidies still flowing from business and residential ratepayers to LEC payphones; and 3) the Commission adopts rate caps at rates below the existing levels, at least 3 harmful conditions will be present in the payphone market:

1. AT&T, MCI and Sprint, by not paying their fair share on access code operator service calls made from payphones, will be free-riders on the backs of payphone providers;
2. Small operator service providers will be faced with a competitive disadvantage against these large carriers because the small OSPs will still be paying compensation to payphone providers on 0+ calls and AT&T, MCI and Sprint will be using payphone services for virtually nothing; and,
3. Payphone providers, who currently use compensation from presubscribed OSPs to offset revenue shortfalls on other types of calls, will see their only revenue source which exceeds cost reduced

significantly.

The market for payphone providers and small operator service providers will be dramatically affected. Therefore, any rate caps set at 20%-30% above the existing rates charged by the three largest carriers, should not take effect until after the rules adopted by the Commission in CC Docket No. 96-128 are effective. In addition, this level assumes that payphone providers receive a fair rate of compensation on access code calls and subscriber 1-800 calls, which the IPTA has proposed to be \$0.55 per call or \$0.11 per minute.

Although the IPTA supports a rate ceiling or benchmark, the Commission should select a rate which it deems acceptable, and then adjust those rates later based on a consumer price index, or other index. (Second Further Notice ¶¶22, 25 .) The IPTA strongly opposes adjusting any benchmark annually based on the rates charged by the three largest carriers, or any other group of carriers. AT&T, MCI and Sprint clearly dominate the operator service industry. By directly tying their rates to the rate that is sanctioned by the Commission, the Commission will remove any incentive by existing operator service providers and future interLATA providers from competing for end users based on price. In addition, the IPTA agrees with the observations made by Ameritech that only AT&T, for example, could adjust its rates without exceeding the benchmark.

C. DISCLOSURE RULES SHOULD BE DESIGNED TO PROVIDE PREDICTABLE, ACCURATE, AND SIMPLE INFORMATION TO CONSUMERS. (Second Further Notice ¶¶29-37.)

The Second Further Notice seeks comment on whether the Commission should adopt rules requiring OSPs that exceed the benchmarks to disclose the rates prior to the completion of the call. The Second Further Notice questions whether, in the alternative, an OSP could disclose the highest rate it might charge, or what an average seven minute 0+ call would cost. (Second Further Notice ¶35.)

The IPTA suggests that if the Commission requires disclosure for 0+ calls, the disclosure of an average rate charged by the OSP would lead to more consumer confusion that exists today. If a rate for an average 7 minute call was provided, and consumers were charged an amount different than the stated rate, these disclosures could lead to more confusion than exists today where there is no automated disclosure.

D. THE COMMISSION SHOULD CONTINUE TO REQUIRE OSPs TO FILE TARIFFS. (Second Further Notice ¶¶38-47.)

The IPTA recommends that the Commission continue to require OSPs to file tariffs setting forth a description of the rates, terms, and conditions of the services offered by OSPs. Even assuming that the Commission adopts benchmarks, it is possible that many OSPs will offer rates that differ from the benchmarks. It is important that all OSPs, whether or not they charge rates equal to the benchmarks, be “on record” somewhere of what rates they are charging for their services. The Second Further Notice refers to the

Commission's IXC Tariff Forbearance NPRM⁶ as support for the observation that not filing tariffs may actually promote competition. (Second Further Notice ¶44.) However, most interexchange carrier charges are pursuant to a written contract between the carrier and the consumer (business or residential.) The Second Further Notice correctly observes that consumers of operator services are very often transient, with no prior relationship with the OSP. Consequently, there is no written document between the consumer and the provider of services. Continuing to require OSPs to file informational tariffs will provide some accountability for the transactions between OSPs and their customers.

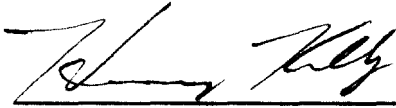
⁶*In the Matter of Policy and rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Notice of Proposed Rulemaking, FCC 96-13 (released March 25, 1996), CC Docket No. 96-91.*

CONCLUSION

For each of the foregoing reasons, the Illinois Public Telecommunications Association respectfully requests that the Federal Communications Commission adopt the recommendations made in these comments.

Respectfully submitted,

**ILLINOIS PUBLIC TELECOMMUNICATIONS
ASSOCIATION**

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APPENDIX

A

Payphone Traffic Patterns

